

THE HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

TOMMY BROWN, on their behalf and on
behalf of other similarly situated persons,

Plaintiff,

vs.

TRANSWORLD SYSTEMS, INC.,
PATENAUDE & FELIX, APC; U.S. BANK,
NA. NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2004-1, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2004-2, NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2005-1,
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2005-2, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2005-3, NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2006-1,
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2006-2, NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2007-1, and NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2007-2,

Defendants.

No. 2:20-cv-00680-DGE

PARTIES' STIPULATED AGREEMENT
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION AND [PROPOSED]
ORDER

1 **A. General Principles**

2 1. An attorney's zealous representation of a client is not compromised by conducting
3 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate
4 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
5 contributes to the risk of sanctions.

6 2. As provided in LCR 26(f), the proportionality standard set forth in
7 Fed.R.Civ.P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further
8 the application of the proportionality standard in discovery, requests for production of ESI and
9 related responses should be reasonably targeted, clear, and as specific as possible.

10 **B. ESI Disclosures**

11 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each
12 party shall disclose:

13 1. Custodians. Up to five (5) custodians who are most likely to have discoverable ESI in
14 their possession, custody, or control. The custodians shall be identified by name, title, connection
15 to the instant litigation, and the type of the information under the custodian's control.

16 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared drives,
17 servers), if any, which are likely to contain discoverable ESI.

18 3. Third-Party Data Sources. A list of third-party data sources, if any, which are likely to
19 contain discoverable ESI (e.g., third-party email providers, mobile device providers, cloud
20 storage) and, for each such source, the extent to which a party is (or is not) able to preserve
21 information stored in the third-party data source.

22 4. Inaccessible Data. A list of data sources, if any, which are likely to contain discoverable
23 ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify
24 the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).
25

1 **C. ESI Discovery Procedures**

2 1. On-site inspection of electronic media. Such an inspection shall not be required absent
3 a demonstration by the requesting party of specific need and good cause or by agreement of the
4 parties.

5 2. Search methodology. The parties shall timely confer to attempt to reach agreement on
6 appropriate search terms and queries, file type and date restrictions, data sources (including
7 custodians), and other appropriate computer- or technology-aided methodologies, before any
8 such effort is undertaken. The parties shall continue to cooperate in revising the appropriateness
9 of the search methodology.

10 a. Prior to running searches:

11 i. The producing party shall disclose the data sources (including custodians), search terms
12 and queries, any file type and date restrictions, and any other methodology that it proposes to use
13 to locate ESI likely to contain responsive and discoverable information. The producing party may
14 provide unique hit counts for each search query.

15 ii. After disclosure, the parties will engage in a meet and confer process regarding
16 additional terms sought by the non-producing party.

17 iii. The following provisions apply to search terms / queries of the requesting party.
18 Focused terms and queries should be employed; broad terms or queries, such as product and
19 company names, generally should be avoided. A conjunctive combination of multiple words or
20 phrases (e.g., “computer” and “system”) narrows the search and shall count as a single search
21 term. A disjunctive combination of multiple words or phrases (e.g., “computer” or “system”) broadens the search, and thus each word or phrase shall count as a separate search term unless
22 they are variants of the same word. The producing party may identify each search term or query
23 returning overbroad results demonstrating the overbroad results and a counter proposal correcting
24 the overbroad search or query.
25

1 3. Format.

2 a. ESI will be produced to the requesting party with searchable text, in a format to be
3 decided between the parties. Acceptable formats include, but are not limited to, native files,
4 multi-page TIFFs (with a companion OCR or extracted text file), single-page TIFFs (only with
5 load files for e-discovery software that includes metadata fields identifying natural document
6 breaks and also includes companion OCR and/or extracted text files), and searchable PDF.

7 b. Unless otherwise agreed to by the parties, files that are not easily converted to image
8 format, such as spreadsheet, database, and drawing files, will be produced in native format.

9 c. Each document image file shall be named with a unique number (Bates Number). File
10 names should not be more than twenty characters long or contain spaces. When a text-searchable
11 image file is produced, the producing party must preserve the integrity of the underlying ESI,
12 i.e., the original formatting, the metadata (as noted below) and, where applicable, the revision
13 history.

14 d. If a document is more than one page, the unitization of the document and any
15 attachments and/or affixed notes shall be maintained as they existed in the original document.

16 4. De-duplication. The parties may de-duplicate their ESI production across custodial and
17 non-custodial data sources after disclosure to the requesting party, and the duplicate custodian
18 information removed during the de-duplication process tracked in a duplicate/other custodian
19 field in the database load file.

20 5. Email Threading. The parties may use analytics technology to identify email threads
21 and need only produce the unique most inclusive copy and related family members and may
22 exclude lesser inclusive copies. Upon reasonable request, the producing party will produce a less
23 inclusive copy.

1 6. Metadata fields. If the requesting party seeks metadata, the parties agree that only the
2 following metadata fields need be produced, and only to the extent it is reasonably accessible and
3 non-privileged: document type; custodian and duplicate custodians (or storage location if no
4 custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size;
5 file extension; original file path; date and time created, sent, modified and/or received; and hash
6 value. The list of metadata type is intended to be flexible and may be changed by agreement of
7 the parties, particularly in light of advances and changes in technology, vendor, and business
8 practices.

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10 **D. Preservation of ESI**

11 The parties acknowledge that they have a common law obligation, as expressed in
12 Fed.R.Civ.P. 37(e), to take reasonable and proportional steps to preserve discoverable
13 information in the party's possession, custody, or control. With respect to preservation of ESI,
14 the parties agree as follows:

15 1. Absent a showing of good cause by the requesting party, the parties shall not be
16 required to modify the procedures used by them in the ordinary course of business to back-up
17 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their
18 possession, custody, or control.

19 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P. 26(e)
20 with discoverable ESI responsive to a particular discovery request or mandatory disclosure where
21 that data is created after a disclosure or response is made (unless excluded under Sections (D)(3)
22 or (E)(1)-(2)).

23 3. Absent a showing of good cause by the requesting party, the following categories of
24 ESI need not be preserved:

25 a. Deleted, slack, fragmented, or other data only accessible by forensics.

1 b. Random access memory (RAM), temporary files, or other ephemeral data that are
2 difficult to preserve without disabling the operating system.

3 c. On-line access data such as temporary internet files, history, cache, cookies, and the
4 like.

5 d. Data in metadata fields that are frequently updated automatically, such as last-opened
6 dates (see also Section (E)(5)).

7 e. Back-up data that are duplicative of data that are more accessible elsewhere.

8 f. Server, system or network logs.

9 g. Data remaining from systems no longer in use that is unintelligible on the systems in
10 use.

11 h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or from mobile
12 devices (e.g., iPhone, iPad, Android devices), provided that a copy of all such electronic data is
13 automatically saved in real time elsewhere (such as on a server, laptop, desktop computer, or
14 “cloud” storage).

15 **E. Privilege**

16 1. A producing party shall create a privilege log of all documents fully withheld from
17 production on the basis of a privilege or protection, unless otherwise agreed or excepted by this
18 Agreement and Order. Privilege logs shall include a unique identification number for each
19 document and the basis for the claim (attorney-client privileged or work-product protection). For
20 ESI, the privilege log may be generated using available metadata, including author/recipient or
21 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata
22 provide insufficient information for the purpose of evaluating the privilege claim asserted, the
23 producing party shall include such additional information as required by the Federal Rules of
24

1 Civil Procedure. A privilege log will be produced to all other parties no later than 30 days after
2 completing all document production unless an earlier deadline is agreed to by the parties.

3 2. Redactions need not be logged so long as the basis for the redaction is clear on the
4 redacted document

5 3. With respect to privileged or work-product information generated after the filing of the
6 complaint, parties are not required to include any such information in privilege logs.

7 4. Activities undertaken in compliance with the duty to preserve information are protected
8 from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

9 5. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding
10 shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute
11 a waiver by the producing party of any privilege applicable to those documents, including the
12 attorney-client privilege, attorney work-product protection, or any other privilege or protection
13 recognized by law. Information produced in discovery that is protected as privileged or work
14 product shall be immediately returned to the producing party, and its production shall not
15 constitute a waiver of such protection.

16 DATED: March 30, 2023
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19 *Collegiate Student Loan Trust 2005-2,*
20 *National Collegiate Student Loan Trust 2005-*
21 *3, National Collegiate Student Loan Trust*
22 *2006-1, National Collegiate Student Loan*
23 *Trust 2006-2, National Collegiate Student*
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17 **ORDER**

18 Based on the foregoing, IT IS SO ORDERED.

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20 DATED: _____
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24 _____
25 Hon. David G. Estudillo
United States District Court Judge